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**MAILED**

Paper No. 9

**APR 16 2003**

**DIRECTOR'S OFFICE  
TECHNOLOGY CENTER 2600**

In re Application of:  
Shigeo Yoshihara  
Application No. 09/283,970  
Filed: April 2, 1999  
For: PORTABLE TELEPHONE CAPABLE OF  
INCREASING FACILITY OF OPERATION

DECISION  
ON PETITION

This is a decision on the petition filed September 17, 2002 to withdraw the holding of abandonment.

A Notice of Abandonment was mailed March 26, 2002 for failure to submit the issue fee in response to the Notice of Allowance mailed August 13, 2001.

Petitioner alleges that the Notice of Allowance and Allowability was not received.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice of Allowance was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice of Allowance on the part of the Patent and Trademark Office.

The allegation of non-receipt is supported by a statement by the practitioner attesting that the Notice of Allowance was not received and that a search of the contents of the file jacket and docket records reveal no evidence of receipt. Copies of the docket records have also been included and corroborate Petitioner's claim.

The showing offered complies with the requirements of a successful petition to withdraw the holding of abandonment due to non-receipt of an Office action as set forth above. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Accordingly, the petition is **GRANTED**.

A Notice of Allowability was mailed along with the Notice of Allowance. Since it has been established that the Notice of Allowance was not received, it is presumed that applicant also failed to receive the Notice of Allowability. The Notice of Allowance and Notice of Allowability originally mailed August 13, 2001 are vacated.

The application file will be forwarded to the Technology Center's technical support staff for issuing a new Notice of Allowance and Issue Fee Due and for re-mailing the Notice of Allowability. The period for response will be reset to run from the mailing date thereof.



Allen R. MacDonald, Director  
Technology Center 2600  
Communications